

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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105 STREET ASSOCIATES, LLC,	:	
	:	
Plaintiff,	:	
	:	05 CV 9938 (VM) (DCF)
-against-	:	
	:	
GREENWICH INSURANCE COMPANY,	:	DECLARATION OF DONALD
	:	<u>CAPOCCIA IN SUPPORT</u>
	:	
Defendant.	:	
	:	
-----X	:	

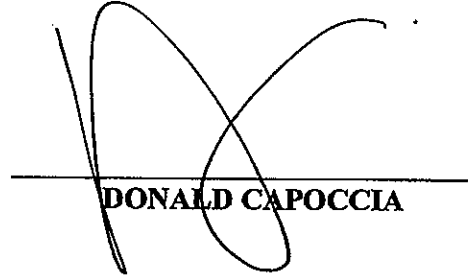
DONALD CAPOCCIA hereby declares under the penalties of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I was at all times relevant herein the managing member of the managing member of 105 Street Associates, LLC ("Plaintiff"), the Plaintiff in this action. I was also the individual designated with the New York Secretary of State to receive service of process on behalf of Plaintiff.

2. I did not receive a copy of the Summons and Complaint in the lawsuit entitled Richard Conrad v. 105 Street Associates, LLC, et al. (the "Conrad Action") in April 2004 or at any other time from the New York Secretary of State.

3. Plaintiff did not have knowledge of the alleged accident involving Richard Conrad or of the Conrad Action until its receipt of a letter, dated July 8, 2004, from Mr. Conrad's attorneys, the law firm of Kelner & Kelner (Exhibit "A").

Dated: New York, New York
March 23, 2007



DONALD CAPOCCIA

A

KELNER AND KELNER
ATTORNEYS AT LAW
140 BROADWAY
37TH FLOOR
NEW YORK, N.Y. 10005
(212) 425-0700
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L.I. OFFICE
114 OLD COUNTRY ROAD, SUITE 152
MINEOLA, N.Y. 11501

July 8, 2004

Via Certified Mail

105 Street Associates, LLC
c/o Donald Capoccia
2226 First Avenue
New York, New York 10029

Re: Richard Conrad v. 105 Street Associates, LLC., Et AL

Dear Sir/Madam,

This office represents the plaintiff in the above-reference matter. A recent review of our file reveals that on April 20, 2004 a Summons and Verified Complaint with respect to this matter was served upon you via the Secretary of State. To date, however, we have not received an appearance and/or answer on your behalf. Thus, you are in default.

Enclosed please find a copy of the summons and complaint, together with a copy of the affidavit of service thereof. It is suggested that you turn the enclosed documentation over to the appropriate party so that an appearance and/or answer can be interposed on your behalf.

Your failure to so appear and/or answer within ten (10) days from the date of this letter will leave us no alternative but to move for a Default Judgement as against you.

Very truly yours,

Kelner & Kelner, Esqs.


Kathleen M. Campoverde,
Paralegal for Gail S. Kelner, Esq.

P00079

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

GAYLE KAPLAN, being duly sworn, deposes and says:

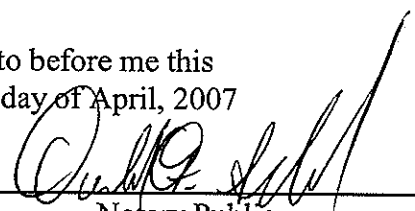
Deponent is not a party to the action, is over 18 years of age and resides in Brooklyn, New York.

On April 12, 2007, deponent served the within Notice of Motion, Plaintiff's Statement Pursuant to Civil Rule 56.1, Declaration of Donald Capoccia in Support, Declaration of Brad Richards in Support and Plaintiff's Memorandum of Law in Support of Motion For Summary Judgment upon Wilson, Elser, Moskowitz, Edelman & Dicker LLP, attorneys for the defendant, at 150 East 42nd Street, New York, New York 10017, by causing a true copy of same to be delivered by Federal Express for next day delivery.



GAYLE KAPLAN

Sworn to before me this
12th day of April, 2007



Notary Public
DONALD F. SCHNEIDER
Notary Public, State of New York
No. 02SC6034524
Qualified in Westchester County
Commission Expires: Dec. 13, 2009